DOCKET

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

PROCEEDINGS AND ORDERS DATE: 122085

CASE NBR 85-1-00111 CSY
SHORT TITLE Michigan DOCKETED: Jul 15 1985
VERSUS Little, Darryl

Date	Proceedings and Orders
Jul 15 1985	Petition for writ of certiorari filed.
Aug 21 1985	DISTRIBUTED. September 30, 1985
Sep 11 1985	Response requested.
Oct 11 1985	Brief of respondent Darryl Little in opposition filed.
Oct 16 1985	REDISTRIBUTED. November 1, 1985
Nov 4 1985	REDISTRIBUTED. November 8, 1985
Nov 12 1985	REDISTRIBUTED. November 15, 1985
Nov 18 1985	REDISTRIBUTED. November 27, 1985
Dec 2 1985	REDISTRIBUTED. December 6, 1985
Dec 9 1985	Petition DENIED. Dissenting opinion by The Chief Justice with whom Justice Rehnquist joins. (Detached opinion.)

PETITION FOR WRIT OF CERTIORARI

Office-Supreme Court, U.S.
FILED
JUL 15 1985
ALEXANDER L. STEVAS,
CLERK

85-111

NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

THE PEOPLE OF THE STATE OF MICHIGAN,

PETITIONER

vs.

DARRYL LITTLE, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI

TO THE COURT OF APPEALS

OF THE STATE OF MICHIGAN

JOHN D. O'HAIR
Prosecuting Attorney
County of Wayne

TIMOTHY A BAUGHMAN
Deputy Chief,
Civil and Appeals
12th Floor, 1441 St. Antoine
Detroit, Michigan 48226
Phone: (313) 224-5792

QUESTION PRESENTED

DOES YBARRA V ILLINOIS COMPEL THE CONCLUSION, AS THE MICHIGAN COURT OF APPEALS HELD IT DOES, THAT A SEARCH WARRANT FOR PRIVATE PREMISES DOES NOT PERMIT A SEARCH OF REASONABLE SCOPE AND INTENSITY OF PERSONS ON THE PREMISES WHERE THE ITEMS PARTICULARIZED IN THE WARRANT MIGHT REASONABLY BE EXPECTED TO BE CONCEALED ON THE PERSON ?

TABLE OF CONTENTS

Question Presented.....1

Index of Authorities.....3

Opinions Below.....5

Statement of Jurisdiction.....5

Constitutional Provisions Involved.....6

Statement of the Case.....7

Reasons for Granting the Writ.....11

Conclusion.....21

Appendix

"A" Order of the Michigan Supreme Court.....2a

"B" Opinion of the Michigan Court of Appeals.....6a

INDEX OF AUTHORITIES

Page

Lippert v State, 664 SW 2d 712 (Tex Cr App 1984)..... 13

Michigan v Long, __ US __, 77 L Ed 2d 1201 (1983).... 20

People v Gross, 465 NE 2d 119 (Ill App 1984)..... 13

People v Harrison, 226 NE 2d 418 (1967)..... 12

People v Harvey, 38 Mich 39; 195 NW 2d 773 (1972).... 17

People v Kielczynski, 264 NE 2d 767 (Ill App 1970)..... 12

People v McHale, 281 NE 2d 776 (1972)..... 12

People v Nash, 418 Mich 196 (1983)..... 20

People v Pugh, 69 Ill App 2d 312, 217 NE 2d 557 (1966)..... 12

State v Weber, 668 P 2d 475 (Or App 1983)..... 13

United States v De Ri, 332 US 581 (1947)..... 13

Ybarra v Illinois, 444 US 85 (1979)..... 11

OTHER AUTHORITIES

MCL 780.656..... 17

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

THE PEOPLE OF THE STATE OF MICHIGAN,

PETITIONER

vs.

DARRYL LITTLE, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI

TO THE COURT OF APPEALS

OF THE STATE OF MICHIGAN

NOW COME the People of the State of Michigan, by John D. O'Hair, Prosecuting Attorney for the County of Wayne, and Timothy A. Baughman, Deputy Chief, Civil and Appeals, and pray that a writ of certiorari issue to review the judgment of the Court of Appeals of the State of

Michigan entered in the above-entitled cause on January 7, 1985, leave to appeal denied by the Michigan Supreme Court May 22, 1985, (one justice dissenting).

OPINIONS BELOW

The opinion of the Michigan Court of Appeals is unreported and is appended as Appendix A. The Order of the Michigan Supreme Court is unreported and is appended as Appendix B.

STATEMENT OF JURISDICTION

The judgment of the Michigan Court of Appeals was entered on January 7, 1985. The judgment of the Michigan Supreme

Court was entered on May 22, 1985. The jurisdiction of this Court is invoked under 28 USC § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> ...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Defendant was charged with possession of heroin. At the preliminary examination Police Officer Kenneth Surma testified that just prior to executing a

search warrant for 4127 25th Street (the warrant being based upon a purchase of narcotics at that address made by a confidential informant) he requested of codefendant James Johnson a purchase of heroin known as the street brand name of "summer madness." Johnson stated, "You know where I lived. Pull around the block and park. I will meet you there." (R,5). A purchase was then made by Officer Surma from Johnson. (R, 6-7).

Police Officer Edward Allen was a part of the crew executing the search warrant. He observed respondent Little in the house, and patted him down for weapons. Feeling what appeared to be envelopes he took envelopes containing heroin from Little's pocket (R 19-20).

The magistrate bound over, expressing

the view that in executing a search warrant on a narcotics pad the officers have a right to search people on the premises for narcotics.(R,26).

The trial judge disagreed, and dismissed. The Michigan Court of Appeals affirmed , based upon Ybarra v Illinois. The Michigan Supreme Court denied leave on May 22, 1985, over the dissent of Justice Boyle that leave should have been granted "to consider whether a search warrant describing private premises might justify a search of persons discovered on those premises under circumstances where it is reasonable to conclude that described items might be found on such persons. The application of Ybarra v Illinois..., which involved the search of an establishment open to the public, to a search warrant for private premises, is

deserving of this Court's consideration." Petitioner now seeks the review of this Court on this issue.(see opinion).

REASONS FOR GRANTING THE WRIT

Ybarra v Illinois, 444 US 85 (1979) should not be read as controlling the instant case. The Michigan Court of Appeals held that it is controlling, and this application of precedent from this Court constitutes an issue requiring the plenary review of this Court. The search warrant involved in Ybarra authorized the search of the "Aurora Tap Tavern... Also the person of 'Greg' the controlled substances, money, instrumentalities and narcotics paraphernalia used in the manufacture, processing and distribution of controlled substances." This Court stated that the search of Ybarra's person could not be justified by the warrant, holding that the warrant gave the officers "no authority whatever to invade the constitutional protections possessed

individually by the tavern's customers." 62 L Ed 2d at 246. Ybarra is distinguishable from the case at bar in several important respects: 1) Ybarra involved a place of public accommodation, this case a private residence; 2) in Ybarra heroin packets were observed only behind the bar and on the person of the bartender; here, someone in the house had sold heroin to an informant; 3) here, a pat down revealed a substance familiar to the officer as a carrier of narcotics; not so in Ybarra.

Petitioner would note that although there are pre-Ybarra cases supporting petitioner's position, see e.g. People v Pugh, 69 Ill App 2d 312, 217 NE 2d 557 (1966); People v Kielczynski, 264 NE 2d 767 (Ill App 1970); People v Harrison, 226 NE 2d 418 (1967); People v McHale,

281 NE 2d 776 (1972), few cases have considered the question post-Ybarra. Those few that have have rejected a private premises/public premises distinction, based primarily on United States v De Ri, 332 US 581 (1947). See People v Gross, 465 NE 2d 119 (Ill App 1984); Lippert v State, 664 SW 2d 712 (Tex Cr App 1984); State v Weber, 668 P 2d 475 (Or App 1983). Petitioner submits that these cases represent what appears to be an emerging trend misapplying Ybarra, and that plenary review is thus required. Petitioner further submits that a search of reasonable scope and intensity of persons on private premises pursuant to a search warrant for those premises, where the items sought could easily be concealed on the person, should be permitted on the basis that the pockets of persons are places within the

premises just as are desk drawers and closets.

On close analysis, Di Re does not support a contrary rule. Di Re involved a warrantless search. An officer was informed by one Reed that Reed was to buy counterfeit gasoline ration coupons from one Battita. Battita was followed as he went to the appointed place. Officers approached the auto -- Reed had coupons in his hand and said he had received them from Battita, who was sitting in the driver's seat. Di Re was a passenger, and the officers had no information whatsoever regarding him. He was arrested and searched, and counterfeit coupons found on his person. The Court held that simply because there was probable cause to believe that Battita possessed coupons this gave no probable

cause to search Di Re, nor to arrest him. The opinion, however, contains some unfortunate dicta. The government had conceded that a warranted search of premises would not justify a search of persons on the premises (the precise question at issue here), and the Court reasoned that an unwarrated search of an auto would not justify a search of all occupants. But clearly the facts demonstrate that the officers only had reason to believe Reed and Battita possessed coupons. To cite Di Re for the proposition that a private premises directed warrant will not allow a search of the person is thus misleading.

Although recognizing that it was unable to persuade a majority of the Court in Ybarra, petitioner submits that the logic of Justice Rehnquist's dissent

is compelling in considering a search of persons on private premises. A search warrant is an anticipatory authorization to search. Just as officers cannot necessarily foresee the existence of closets, cupboards, desks, nightstands, and briefcases, neither can they necessarily foresee the existence of persons with either an interest in the items to be seized or an interest in frustrating the warrant. Where the warrant clause has been satisfied and probable cause to search private premises determined by a neutral judicial officer, a search of reasonable intensity for the sought after items is permitted. A search of reasonable intensity includes the pockets of persons on private premises where the items named in the warrant could be concealed on the person.

That a police officer armed with a search warrant for premises may conduct a search of reasonable scope and intensity of persons on the premises where the items named in the search warrant could reasonably be expected to be concealed on the person is commended by policy and logic, particularly when the existence of knock and announce requirements is considered. Before officers executing a search warrant may force entry they must request admittance, giving notice of their authority and purpose. MCL 780.656. Case law holds that after announcing their authority and purpose the officers must wait long enough for the inhabitants of the premises to reach the door from the room farthest away before forcing entry. See e.g. People v Harvey, 38 Mich 39; 195 NW 2d 773 (1972). Obviously, it would be a simple matter

for a person present in the premises to pick up the item named in the warrant and put it in his pocket (where the item is of a sort easily concealed in a pocket). Or, upon seeing the approach of officers a person present in the premises could put the item, for example, a package of heroin, in his pocket and walk out the door. Perhaps not observing the officers, one present in the premises might put the heroin in his pocket and walk out the door on the way to a delivery. The purpose of the warrant should not be frustrated by such facile maneuvers. A search of reasonable scope and intensity of persons on private premises which are being searched pursuant to a warrant, where the items sought could easily be concealed on the person, considering the pockets of the persons to be placed within the premises

and thus covered by the warrant, is a reasonable search, and thus within the Fourth Amendment. The search in the instant case was within the scope of the warrant.

Petitioner would here note parenthetically that the issue here is <u>not</u> one of state law. The Michigan Court of Appeals decision was grounded <u>solely</u> on

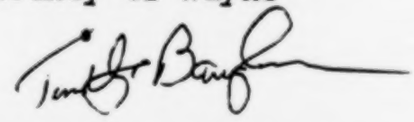
federal law (Ybarra), and the Michigan Supreme Court has held that there is not a different standard under the Michigan search and seizure provision unless that court specifically says so on a particular issue, and it has not here. See People v Nash, 418 Mich 196 (1983). See also Michigan v Long, __ US __, 77 L Ed 2d 1201 (1983).

CONCLUSION

WHEREFORE, Petitioner concludes that this Court should grant plenary review, reverse the Michigan Court of Appeals, hold that the substance seized from respondent may be admitted at trial consistent with the Constitution, and remand for proceedings not inconsistent with this Court's opinion.

Respectfully submitted,

JOHN D. O'HAIR
Prosecuting Attorney
County of Wayne



TIMOTHY A BAUGHMAN
Deputy Chief,
Civil and Appeals
12th Floor, 1441 St. Antoine
Detroit, Michigan 48226
Phone: (313) 224-5792

APPENDICES

ORDER OF THE MICHIGAN SUPREME COURT

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 22nd day of May in the year of our Lord one thousand nine hundred and eighty-five.

Present

The Honorable G. MENNEN WILLIAMS,
Chief Justice

THOMAS GILES KAVANAGH,
CHARLES L. LEVIN,
JAMES L. RYAN,
JAMES H. BRICKLEY,
MICHAEL F. CAVANAGH,
PATRICIA J. BOYLE,
Associate Justices

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SC: 75815
COA: 75367
LC: 83-05596

DARRYL LITTLE,

Defendant-Appellee.

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

Boyle, J., dissents and states as follows:

I would grant leave to appeal to consider whether a search warrant describing <u>private</u> premises might justify a search of persons discovered on those

premises under circumstances where it is reasonable to conclude that described items might be found on such persons. The application of Ybarra v Illinois, 444 US 85; 100 S Ct 338; 62 L Ed2d (1979), which involved the search of an establishment open to the public, to a search warrant for private premises, is deserving of this Court's consideration.

STATE OF MICHIGAN -- ss.

I, CORBIN R. DAVIS, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and

that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court (seal) at Lansing this 22nd day of May in the year of our Lord one thousand nine hundred and eighty-five.

/s/Corbin R. Davis Clerk

OPINION OF THE MICHIGAN COURT OF APPEALS

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant

V Jan 7, 1985

DARRYL LITTLE,

Defendant-Appellee.

Docket No. 75367

BEFORE: T.M. Burns, P.J., M.J. Kelly and N.J. Kaufman,* JJ

PER CURIAM

Defendant was charged with possession of heroin, MCL 333.7403(2)(a); MSA 14.15(7403)(2)(a). At the preliminary examination, defense counsel argued that the evidence had been illegally obtained. The magistrate disagreed and bound defendant over for trial. The trial judge, however, granted defendant's motion to suppress. The prosecution appeals.

The parties have framed the issue in this case as whether a search warrant for a private residence permits a search of persons on the premises where the items particularized in the warrant might reasonably be expected to be concealed on the person.

---

* Retired Court of Appeals Judge sitting by assignment.

The search warrant in this case authorized a search of a "single dwelling building" at 4127 25th Street in the City of Detroit. It also stated, "The Seach [sic] is to include a B/M/28-32 5-10 ruddy complx called James". The items to be seized were:

> "Heroin and other controlled substances, any items used in the manufacture, distribution, storage, sale, or use of controlled substances, illegal firearms proof of residence, and narcotic proceeds (to include all prerecorded secret service funds) ect [sic]."

The search warrant was based on the sworn statement of Police Officer Kenneth Surma that a reliable SOI had gone into the house at 4127 25th Street the day before and purchased heroin from a man named James.

At the preliminary examination, Officer Surma testified that, prior to execution of the search warrant for 4127 25th Street, he purchased some heroin from codefendant James Johnson behind the house. Police Officer Caramagno testified that they then went up to the house, announced their presence and purpose, and went in. After James Johnson was arrested, and the heroin packets he threw down had been retrieved, Officer Allen testified he saw defendant in the dining room, and placed him against the wall and patted him for offensive weapons. In defendant's right pocket, Officer Allen felt what appeared to be a coin envelope or narcotics paraphernalia. He then retrieved two packets from defendant's pocket, which proved to contain heroin. Officer Allen admitted that he had no warrant to search

all persons on the premises as a blanket search, but stated that, in attempting to secure the premises, he had the right to search defendant for offensive weapons. He admitted that the objects he felt in defendant's pocket did not feel like offensive weapons, but testified that he had the right to pat defendant down for controlled substances as well, because "he was in a narcotics pad". The magistrate agreed with this view, commenting, "I think it is quite reasonable when there is a search following a search warrant of a reputed narcotics pad, so to speak, that anybody found on those premises is subject to a search."

The prosecution contends that, just as a search warrant for premises need not specify and describe every container within the premises in which the items to be seized might be secreted, neither must

it necessarily specify and describe persons whose clothing contains places where the items to be seized might be concealed, particularly where, as here, the appearance of the clothing adds credence to the possibility that items named in the warrant are on the person. We agree that items like narcotics could as easily be concealed in a person's pocket as in a dresser drawer; however, the dresser does not have a constitutional right to be free of unreasonable searches and seizure, whereas persons do. US Const, Am IV; Const 1963, art 1, §11; Katz v United States, 389 US 347, 351; 88 S Ct 507; 19 L Ed2d 576, 582 (1967).

As the prosecution points out, cases from other jurisdictions have upon occasion upheld a search of a person although the search warrant authorized only a search of the premises at which

the person was found. Michigan is no exception. In People v Krokker, 83 Mich App 474; 268 NW2d 689 (1978), this Court upheld the admission into evidence of heroin seized from defendant's person, although the search warrant authorized a search for heroin, paraphernalia and marked money suspected to be in a town-house occupied by defendant, but did not authorize a search of defendant. However, defendant was specifically described and identified in the warrant, and the information in the affidavit supporting the warrant indicated that both the premises and defendant were targets. Judge T.M. Burns dissented, holding that the warrant as actually written was not broad enough to cover the search of defendant's person. In the instant case, in contrast, there is no indication that the police even knew who defendant was

prior to finding him on the premises to be searched.

The prosecution also relies on People v Broach, 111 Mich App 122; 314 NW2d 544 (1981), in which, on very similar facts, we found no reason to suppress the drugs found on the defendant. The critical difference in Broach was that in patting the defendant down for weapons, the officer did in fact discover a .38-caliber revolver; and upon further pat-down, the bag containing the foil packets of heroin protruded from the defendant's pocket. In contrast, in the instant case, not only did the officer find no weapon justifying further search, he also admitted that the packets he felt and extracted from defendant's pocket did not feel like weapons. The officer in Broach was searching for weapons, which he had a right to do, when he inadvertently found

drugs; the officer in this case admitted he was patting defendant down for drugs, which he has no constitutional right to do without a warrant.

Recently, this Court upheld suppression of evidence obtained from a person who was at the premises named in the search warrant, but was not one of the individuals named in the warrant. People v Burbank, 137 Mich App 266; ___NW2d___ (1984); lv den 419 Mich 917 (1984). The Court relied on Ybarra v Illinois, 444 US 85; 100 S Ct 338; 62 L Ed2d (1979), in which the United States Supreme Court ruled that heroin found in defendant's pocket must be suppressed because the warrant allowed only a search of the tavern and the bartender, so the police had no authority to search all of the customers who happened to be present. The prosecution in this case attempts to

distinguish Ybarra on the basis that it is reasonable to believe that the items sought could be concealed on persons on private premises whereas it would be unreasonable to assume that every customer in a public establishment, such as a tavern, would be concealing items named in the search warrant. On the other hand, a person's legitimate expectation of privacy could be greater in a private residence than in a bar.

Without allegations in the search warrant that there was probable cause to search defendant, the search of his pockets and seizure of their contents was unreasonable, and therefore unconstitutional.

Affirmed.

/s/ Thomas M. Burns

/s/ Michael J. Kelly

/s/ Nathan J. Kaufman

OPPOSITION

BRIEF

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

85-111 (2)

Supreme Court, U.S.
FILED
OCT 11 1985
JOSEPH F. SPANIOL, JR
CLERK

NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

THE PEOPLE OF THE STATE OF MICHIGAN

PETITIONER

vs.

DARRYL LITTLE, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI

TO THE COURT OF APPEALS

OF THE STATE OF MICHIGAN

RESPONDENT'S REPLY IN OPPOSITION

STEVEN RABINOVITZ P191/4
Attorney for Respondent
1441 E. Maple, Ste 102
Troy, Mich. 48084
Phone (313) 689-3873

BEST AVAILABLE COPY

9pp

TABLE OF CONTENTS

Index of Authorities 2

Restatement of the Case 4

Reasons for denying the writ 5

Conclusion 8

INDEX OF AUTHORITIES

Ybarra v Illinois,
444 US 85 (1979)..... 5

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

THE PEOPLE OF THE STATE OF MICHIGAN

PETITIONER

vs.

DARRYL LITTLE, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI

TO THE COURT OF APPEALS

OF THE STATE OF MICHIGAN

RESPONDENT'S REPLY IN OPPOSITION

NOW COMES Respondent, Darryl Little, by and through his court-appointed attorney, Steven Rabinovitz, and prays that the Court deny the Petitioner's prayer to issue a writ of certiorari to review the judgment of the Court of Appeals of the State of Michigan entered in the above

entitled cause on January 7, 1985, leave to appeal denied by the Michigan Supreme Court May 22, 1985, (one justice dissenting).

RESTATEMENT OF THE CASE

Respondent accepts Petitioner's statement of facts, but adds affirmatively that officer Surma made the purchase from Johnson behind the premises located at 4127 25th Street, and additionally that officer Allen testified on cross-examination that upon patting down respondent, he could not tell whether the bulge was narcotics paraphernalia, coin envelopes or a rolled up piece of paper.

REASONS FOR DENYING THE WRIT

Petitioner attempts to distinguish the present case from Ybarra v Illinois, 444 US 85 (1979) in three aspects. 1) The premises in Ybarra consisted of a place of public accomodation as opposed to a private residence as in this case; 2) in Ybarra, heroin packets were observed only behind the bar and on the person of the bartender as opposed to someone in the house having sold heroin to an informant; and 3) here, a pat down revealed a substance familiar to the officer as a carrier of narcotics. In fact the only factor which has any bearing is whether the type of premises, i.e. private home versus building open to the public makes any difference.

The facts clearly show that the person who sold the narcotics was

specifically identified and the sale took place behind the house and not in the residence as inferred in Petitioner's statement of facts. Also, the arresting officer said he could not distinguish the coin envelope as being a coin envelope or a rolled up piece of paper during the pat down. If in fact he could have so distinguished the object, he may have had probable cause to search the Respondent independent of the search warrant issued for the premises making that fact of no consequence.

The ultimate question then is whether Ybarra protects fourth amendment rights of persons present during the search of a building open to the public pursuant to a search warrant but does not protect the same rights of persons present in a private residence under similar circumstances. As indicated in the

decision of the Court of Appeals of the State of Michigan:

> ... a person's legitimate expectation of privace could be greater in a private residence than in a bar.

It would be just as easy to frustrate the purpose of the warrant in a bar as in a private residence by having a patron who was involved with the seller secrete the evidence on his person as in a private residence. The clear implication of the Petitioner's argument is that anyone present in a private residence has guilty knowledge of the character of the owner of the premises which would not be true of the bar. Under the facts presented there is no basis for such a conclusion.

CONCLUSION

WHEREFORE, Respondent concludes that this Court should deny plenary review for the reason that the decision of the Court of Appeals of the State of Michigan is consistent with the decisions of this Court.

Respectfully submitted,

Bernstein & Rabinovitz,P.C.

by Steven Rabinovitz
Steven Rabinovitz P19174
1441 E. Maple, Ste 102
Troy, Mich. 48084
phone (313) 689-3873

OPINION

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

SUPREME COURT OF THE UNITED STATES

MICHIGAN *v.* DARRYL LITTLE

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MICHIGAN

No. 85–111. Decided December 9, 1985

The petition for writ of certiorari is denied.

CHIEF JUSTICE BURGER, with whom JUSTICE BLACKMUN and JUSTICE REHNQUIST join, dissenting from the denial of certiorari.

In this case, an informant told police that he had made a purchase of narcotics from one James Johnson at Johnson's home. Based on this information, police secured search warrants for Johnson and for his home. Before executing the warrants, one of the police officers purchased heroin from Johnson in Johnson's back yard. Shortly thereafter, police went to the house, announced their authority, presence and purpose, and entered. They arrested Johnson and seized packets of heroin he had tried to throw away. Officer Allen then noticed respondent in an adjacent room. Allen made a "pat down" prophylactic search for weapons. He testified that he felt what seemed "to be a coin envelope or narcotics paraphernalia" in respondent's pocket. Allen removed the envelope and discovered heroin inside. The trial court granted respondent's motion to suppress the evidence, and the Michigan Court of Appeals affirmed, relying on *Ybarra* v. *Illinois*, 444 U. S. 85 (1979).

Ybarra in no sense controls this case. In *Ybarra*, police obtained a warrant authorizing the search of a *public bar* and of the bartender. Police entered the bar and immediately searched nearly a dozen patrons, including Ybarra, for weapons. The initial search of Ybarra revealed no weapons. Police returned several minutes later, searched Ybarra again, and found a small packet of heroin. The Court's holding in *Ybarra* that the second search violated Ybarra's Fourth Amendment rights was based on the presence of Ybarra in a

public place under circumstances which, in the view of the Court, did not legitimately focus suspicion on Ybarra. *Id.*, at 91.

Here, however, respondent Little was not a member of the public present in a public place. He and Johnson were the only two people present in a dwelling that a magistrate had determined was probably a center of illicit drug activity. Upon entering Johnson's home, the police discovered packets of heroin which Johnson had attempted to dispose of, indicating that illicit drug activity had occurred as recently as moments before their entry. Evidence of such activity could have been placed on the person of someone in the premises as easily as it could have been hidden in a dresser drawer. Under the circumstances, the police reasonably concluded that the nexus between respondent Little and the illicit drug activity was sufficiently close to give them probable cause to conduct a cursory search of respondent's person as part of their search of Johnson's home pursuant to a valid search warrant.

The Michigan Court of Appeals concluded that the search became unreasonable as soon as Officer Allen discovered that respondent was unarmed; Allen's determination coincided, however, with his discovery of what he reasonably suspected was narcotics paraphernalia. At that point, Officer Allen could confirm or dispel that suspicion by removing the object, only marginally increasing the intrusiveness of the search. Under these circumstances, the justification for the search outweighed the invasion that the search entailed. The Michigan Court of Appeals misconstrued *Ybarra* and its decision represents an unwarranted expansion of our holding in that case. This is the kind of result that undermines public confidence in the administration of justice. I would grant certiorari to give plenary consideration to this case.